

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Syscan, Inc.,

NO. C 07-01603 JW

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
ADMINISTRATIVE REQUEST TO
EXTEND DISCOVERY**

v.

Plustek, Inc., et al.,

Defendants.

Presently before the Court is Plaintiff's Administrative Request to Extend Discovery. (hereafter, "Request," Docket Item No. 47.) Plaintiff seeks to modify the Court's September 14, 2007 Scheduling Order to extend the close of Discovery to March 31, 2009. (Request at 1.) Defendants have filed a timely opposition. (Defendants' Opposition to Plaintiff's Administrative Request to Extend Discovery at 2-3, hereafter, "Opposition," Docket Item No. 48.)

On March 18, 2008, the parties reached a preliminary settlement through mediation, and mutually agreed to suspend discovery pending a final settlement. (Declaration of Yung-Ming Chou in Support of Plaintiff Syscan Inc.'s Administrative Request to Extend Discovery ¶ 4, hereafter, "Chou Decl.," Docket Item No. 47.) From March 2008 to September 2008, the parties continued to negotiate a final settlement and drafted numerous proposed settlement agreements. (Chou Decl. ¶ 5.) On September 8, 2008, the parties' negotiations ended without a settlement agreement. (Chou Decl. ¶ 5.) Pursuant to the Court's September 14, 2008 Scheduling Order, discovery closed on September 29, 2008. (Scheduling Order at 1, Docket Item No. 26.)

Under Fed. R. Civ. P. 16(b)(4), a court may modify its Scheduling Order for “good cause” shown. Here, Plaintiff contends that good cause exists for extending the discovery deadline because the parties mutually agreed to suspend discovery in order to pursue settlement, and the settlement negotiations ended only three weeks before discovery was scheduled to close. (Request at 3.) Plaintiff also provides a declaration from its counsel stating that in his view Plaintiff “will not have a meaningful and fair trial if the parties cannot complete the discovery and gather all the evidence.” (Chou Decl. ¶ 10.) Should an extension be granted, Plaintiff intends to conduct several depositions. (Supplemental Declaration of Yung-Ming Chou in Support of Reply to Defendants’ Opposition ¶¶ 4-5, hereafter, “Supp. Chou Decl.,” Docket Item No. 49.) Plaintiff has already served additional non-party subpoenas, interrogatories and requests for production. (*Id.* ¶ 7.)

Defendants contend that Plaintiff’s Request should be denied on the grounds that Plaintiff did not attempt to conduct discovery during the three weeks between the end of settlement negotiations and the close of discovery and Plaintiff delayed almost six weeks from the close of discovery in bringing this motion. (Opposition at 2-3.)

In response to Defendants’ first contention, Plaintiff’s counsel provides a declaration explaining that it failed to conduct discovery during the final three weeks that discovery was opened under the Scheduling Order because its counsel was distracted by trial preparation for another matter. (Chou Decl. ¶ 6.) Further, Plaintiff counters that it would have been impossible to complete discovery in only three weeks. (Request at 3.)

With respect to Defendants’ second contention, Plaintiff’s counsel again explains that he was “fully engaged” in trial preparation for another matter during October 2008, and this motion was filed soon after he was “finally free” from the other matter. (Chou Decl. ¶ 6.)

The Court finds good cause exists for extending the close of discovery. Defendants will not be prejudiced by an extension of discovery despite Plaintiff’s delay. Defendants’ Motion for Summary Judgment, originally noticed for December 1, 2008, was continued until February 23, 2008. (*See* Docket Item No. 41.) Thus, a reasonable amount of discovery can be conducted before the remaining briefs concerning Defendants’ motion must be filed.


Accordingly, the Court GRANTS Plaintiff's Administrative Request to Extend Discovery.

The Court modifies the schedule as follows:

- (1) The close of all discovery is extended to **February 20, 2009**.
- (2) The hearing on Defendants' Motion for Summary Judgment (Docket Item No. 36) is continued from February 23, 2009 to **March 23, 2009 at 9 a.m.**
- (3) Plaintiff's Opposition shall be filed and served on or before **March 2, 2009**.
- (4) Defendants' Reply, if any, shall be filed and served on or before **March 9, 2009**.

The parties shall work in good faith to complete their discovery. The Court will not entertain further requests for extension of these deadlines.

Dated: November 25, 2008



JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Sang Ngoc Dang sdang@koslaw.com
Yung-Ming Chou chouyung@aol.com

Dated: November 25, 2008

Richard W. Wieking, Clerk

By: /s/ JW Chambers

**Elizabeth Garcia
Courtroom Deputy**